## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

DIXIE ELECTRIC MEMBERSHIP	)	
CORPORATION,	)	
Respondent	)	
_	)	G 37 45 G1 40054
and	)	Case Nos. 15-CA-19954
	)	15-UC-61496
INTERNATIONAL BROTHERHOOD	)	
OF ELECTRICAL WORKERS, LOCAL	)	
UNION 767,	)	
	)	
Charging Party	)	

# CHARGING PARTY'S MOTION TO STRIKE DIXIE ELECTRIC MEMBERSHIP CORPORATION'S EXCEPTIONS AND SUPPORTING BRIEF

Charging Party International Brotherhood of Electrical Workers, Local Union 767 ("Local 767") moves that the National Labor Relations Board strike the Exceptions to Administrative Law Judge's Decision and the Brief in Support of Exceptions to Administrative Law Judge's Decision filed by Dixie Electric Membership Corporation ("DEMCO") because DEMCO has failed to comply with Section 102.46(b)(1) of the Board's Rules and Regulations.

#### I. PROCEDURAL HISTORY

On January 24, 2012, Administrative Law Judge Robert A. Ringler issued his decision ("ALJD") in this matter. On that same day, the Board issued an order ("Order") transferring the case to the Board pursuant to Section 102.45 of its Rules and Regulations. On March 12, 2012, DEMCO filed exceptions to the Judge's decision and a supporting brief. DEMCO's exceptions and its supporting brief do not comply with Section 102.46(b)(1) of the Board's Rules and Regulations.

#### II. ARGUMENT

Section 102.46(b)(1) of the Board's Rules and Regulations, a copy of which was appended to the Board's Order, provides:

Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the support of the exception. If a supporting brief is filed, the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief.

Furthermore, Section 102.46(b)(2) states that "[a]ny exception which fails to comply with the foregoing requirements may be disregarded." In short, a "party excepting to the findings of an administrative law judge must set forth with specificity those portions of the judge's decision to which it excepts, and support the contentions with legal or record citations or appropriate argument." *Bonanza Sirloin Pit*, 275 NLRB 210, 210 (1985).

The Board is particularly concerned with ensuring that exceptions are "stated with sufficient particularity to give fair notice to the General Counsel and the Charging Party, or to permit review by the Board." Stagehands Referral Service, 356 NLRB No. 152, slip op. at 1 (2011). Accordingly, the Board will strike a party's exceptions where the party fails to provide, either in its exceptions or in its supporting brief, precise citations to the record evidence that purportedly supports its exceptions. James Troutman & Associates, 299 NLRB 120, 120 (1990) (granting the General Counsel's motion to strike exceptions where they, among other things,

"cite[d] no legal authority and no transcript pages or any other record evidence that purportedly would support the contention that the judge erred"). See also BCE Construction, 350 NLRB 1047, 1047-48 (adopting, pro forma, portion of Judge's decision where exception did not set forth specific arguments on the merits or "designate by precise citation of page the portions of the record relied on"); Tri-Tech Services, Inc., 340 NLRB 894, 896 (2003) (holding that exceptions that do not comply with Rule 102.46(b)(1) are not properly before the Board). The Board also will disregard a party's exceptions where the party fails to set forth the "specific portions of the judge's decision to which it excepts." Howard K. Sipes Company, 319 NLRB 30, 30 (1995).

DEMCO has failed to conform its exceptions to the minimum requirements set forth in Section 102.46(b)(1). First, its exceptions and supporting brief fail to identify with particularity the portions of the Judge's decision to which DEMCO objects. DEMCO's exceptions do not cite to specific portions of Judge's decision, and they do not specify DEMCO's specific points of disagreement with the Judge's reasoning. (Exceptions at 1-2)<sup>1</sup> DEMCO's failure is repeated in its supporting brief. Although DEMCO's supporting brief does contain citations to the Judge's decision (see, e.g., Supporting Brief at 7), these citations fail to identify the precise portions of the Judge's decision to which DEMCO objects. For example, DEMCO's nine page argument regarding the alleged supervisory status of certain bargaining unit

Local 767 will cite to DEMCO's exceptions as "Exceptions at \_\_\_\_," to its supporting brief as "Supporting Brief at \_\_\_\_," and to the Judge's decision as "ALJD "

employees includes only one vague citation to the Judge's decision. (Supporting Brief at 7-15) This general citation to four pages of the Judge's decision is insufficient to identify for the Board, counsel for the Acting General Counsel, or Local 767 those specific portions of the Judge's decision to which DEMCO objects. Accordingly, DEMCO has failed to comply with Section 102.46(b)(1)(ii)'s requirement that it specifically identify the parts of the Judge's decision to which it objects.

Second, DEMCO fails to support its arguments with specific citations to the record in either its exceptions or its supporting brief. Indeed, although DEMCO's supporting brief relies heavily on the testimony adduced during the two day hearing in this matter, its supporting brief contains no citations to the hearing transcript. While the Judge's decision contains express references to the transcript and exhibits (see, e.g., ALJD at 5), DEMCO fails to cite to documents or testimony of record on which it bases its exceptions to the Judge's rulings.<sup>2</sup> Local 767 is handicapped in presenting its opposition to DEMCO's exceptions to the Board, without having any indication, by way of citation to the record, of the precise record evidence on which DEMCO relies. If required to respond to these inadequate filings, Local 767 will be forced to guess at what DEMCO is relying on. Finally, the Board itself will be disadvantaged in ruling on DEMCO's exceptions. Section 102.46(b)(1)(iii) explicitly

In limited instances DEMCO cites to several exhibits (but no testimony), but even these citations are unhelpful. For example, DEMCO's discussion of its Exhibit 1 and of testimony regarding this exhibit illustrates its failure to comply with Section 102.46(b)(iii). (Supporting Brief at 17) Although DEMCO cites to its Exhibit 1, it fails to identify specific relevant pages of this thirty-three page document, and it fails to cite to any pages in the transcript containing testimony related to this document. (*Id.*)

requires parties to "designate by precise citation of page the portions of the record relied on" in order to allow the Board to determine whether there is any factual support in the record for the excepting party's arguments. DEMCO unquestionably has failed to comply with this requirement.

### III. CONCLUSION

For these reasons, the Board should grant Local 767's motion to strike DEMCO's exceptions and its supporting brief. Local 767 is simultaneously filing a request to extend the time for filing its answering brief to DEMCO's exceptions. In the event the Board grants Local 767's motion to strike, no responsive pleading may even be required. Accordingly, Local 767 is requesting that the time for filing its answering brief be extended to April 13, 2012, four weeks from the filing of this motion.

Respectfully submitted,

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February 16, 2012

#### CERTIFICATE OF SERVICE

On March 16, 2012, I served, by electronic mail, the foregoing Charging Party's Motion to Strike Dixie Electric Membership Corporation's Exceptions and Supporting Brief upon:

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